

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

THERESA MARIE SIMEONE, Personal	:	
Representative of the Estate of Albert Francis	:	
Simeone, Jr., Deceased, and THERESA MARIE	:	CIVIL ACTION NO. 02CV4852
SIMEONE, In Her Own Right, and	:	
MARY ANN LENGYEL, Personal	:	
Representative of the Estate of George Lengyel,	:	
Deceased, and MARY ANN LENGYEL,	:	JURY TRIAL DEMANDED
In Her Own Right	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
BOMBARDIER CORPORATION GmbH, et al.	:	
	:	
Defendants.	:	

APPENDIX

**TO REPLY MEMORANDUM OF LAW IN SUPPORT OF
SUMMARY JUDGMENT ON BEHALF OF DEFENDANTS
BRP-ROTAX GMBH & CO. KG AND BOMBARDIER INC.**

EXHIBIT CC

ORAL DEPOSITION OF RONALD G. MADISON, 6/30/05

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF PENNSYLVANIA
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5 THERESA MARIE SIMEONE,
etc., Et al.,

6
vs.
7

BOMBARDIER-ROTAX,
8 GmbH, et al. 2:02-cv-04852 (BMS)
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13 Oral deposition of RONALD
14 G. MADISON, held in the home of
15 Ronald G. Madison, 1517 KBS Road,
16 Spring Grove, Pennsylvania, held on
17 Thursday, June 30, 2005, commencing
18 at 4:09 p.m., before Kathleen McHugh,
19 a Registered Professional Reporter
20 and Notary Public.
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22
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24

ORAL DEPOSITION OF RONALD G. MADISON, 6/30/05

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1 then like off to the side, you know,
2 just looking down, more or less, I
3 thought I seen something off to my
4 right-hand side go down that wasn't
5 normal.

6 So then I hollered down to
7 my daughter and I said about calling
8 911. She said, Dad, are you sure you
9 seen it?

10 And then I, I wasn't quite
11 sure if I did or not. I said, Well,
12 then call the airport and tell them
13 that we seen something go down, and
14 that was about it.

15 Q. And when you say you saw
16 something that wasn't normal and
17 didn't look normal, can you explain
18 what you mean by that?

19 A. Like a plane, it was low
20 when I seen it, and it just went off
21 into the right and went down, but I
22 didn't know if it went down the whole
23 way, if it hit the ground or if it
24 just flew out over top of the

Page 12

1 Q. Was he on the roof, too?

2 A. Yes.

3 Q. Is this something that sort
4 of appeared out of the corner of your
5 eye?

6 A. Yes.

7 Q. And are you sure that what
8 you saw was an aircraft of some kind?

9 A. I knew it was an aircraft
10 of some kind, yes.

11 Q. And how did you know it was
12 an aircraft?

13 A. They're flying around all
14 the time and it was over the top of
15 the cornfield.

16 Q. So you knew it was
17 something that was in the air flying,
18 right?

19 A. Yes.

20 Q. Did you get enough of a
21 look at the airplane to tell us what
22 color it was?

23 A. Yellow, I guess. It's been
24 a long time.

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1 cornfield, because I didn't hear no
2 noise.

3 Q. When you saw what you saw,
4 were you standing or kneeling on your
5 roof or sitting?

6 A. Just bending. Bending
7 and -- well, looking -- well, I guess
8 be more or less standing, but not
9 staring. You know, I was working on
10 my roof but, you know, you could see
11 off to the sides, you know.

12 Q. You were not paying any
13 particular attention to what was
14 going on at the airport?

15 A. No. No.

16 Q. And if I understand you
17 correctly, your gaze was not fixed on
18 the airport either, right?

19 A. Right.

20 Q. Were you looking at what
21 you were doing?

22 A. More or less, or talking to
23 my brother-in-law Charlie.

24 Either/or.

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1 Q. And what direction was it
2 heading in when you first saw it?

3 A. It was sort of like heading
4 towards the airport but bearing off
5 and going down to the right, more or
6 less. It just like -- I don't know.
7 Off to the right.

8 Q. And for how long did you
9 have the airplane in your site?

10 A. I'm saying 15 seconds or
11 so. It was just a --

12 Q. And in that -- over that 15
13 seconds, how long, if at all, were
14 you actually focused on the aircraft?

15 A. I can't say I was really
16 focused at the aircraft. It was just
17 I seen an aircraft. I can't really
18 say I was focused at it. That's why
19 I say just call the airport, did I
20 see it or not.

21 Q. And during the 15 seconds,
22 did the aircraft appear to be
23 maintaining a constant speed or were
24 there changes in the speed?

ORAL DEPOSITION OF RONALD G. MADISON, 6/30/05

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1 A. No, it -- like I say, when
2 I seen it, it went off to the right,
3 and I didn't know if it went down
4 into the cornfield or slid -- you
5 know, was that low that it could
6 glide out over the corn, and then I
7 lost site.

8 Q. Did it appear to you to be
9 having any type of a problem?

10 A. The way it was flying I
11 thought it might be having a problem
12 but it didn't -- I didn't hear no
13 noise, no nothing. I didn't hear no
14 bang when it did wreck or nothing.

15 Q. Did you hear any engine
16 noise at any point?

17 A. No. No.

18 Q. When planes are coming in
19 to land at the airport, are you
20 typically able to hear engine noise?

21 A. Yes.

22 Q. And when you said a moment
23 or two ago that you didn't hear any
24 noise, were you referring to -- what

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1 like into a glide. It wasn't no
2 fast, sharp, straight down or
3 nothing -- not the way I seen it.

4 Q. Are you familiar with a
5 series of towers and power lines that
6 slope down from -- they go over KBS
7 Road and then slope down towards the
8 airport?

9 A. Yes.

10 Q. Did you -- can you relate
11 the location of the aircraft to those
12 power lines as you were able to see
13 that day?

14 A. The way you're on the roof,
15 I don't even know if you can see the
16 power lines or not, but the way I
17 thought, he never touched or they
18 weren't no problem with the power
19 lines.

20 Q. What makes you say that?

21 A. Because you'd think -- not
22 unless he nipped them, but the way he
23 was going down, I don't think the
24 power lines had anything to do with

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1 were you specifically referring to?
2 A crash noise or an engine noise or
3 some other kind of noise?

4 A. Well, when I seen the plane
5 going down, I didn't really hear no
6 noise at all as a plane noise and I
7 didn't hear no crash, if -- when it
8 did go down.

9 Q. And what led you to think
10 that it might have been having a
11 problem?

12 A. The way it was angled going
13 down. Like I say, when I was asked
14 about it, you sort of think about it,
15 did it go out over the corn or did it
16 go into the corn.

17 Q. And could you describe that
18 angle a little more specifically?
19 Let me ask you a different question.

20 When you refer to an angle,
21 are you referring to an angle in
22 which it was turning or an angle in
23 which it was going, up, down?

24 A. Going down more or less,

Page 17

1 it.

2 Q. I'm just trying to get at
3 why you would say that, one way or
4 the other?

5 A. Because I think he was out
6 further than the power lines when it
7 was going down.

8 Q. And by "out further," you
9 mean he wasn't -- the path that he
10 was taking towards the airport was
11 not near the power lines?

12 A. When he -- he was going
13 off -- from the power lines he was
14 headed off to the right of them.

15 Q. So --

16 A. The way I thought.

17 Q. So from your point of view,
18 if I could relate it this way, he was
19 not between your house and the power
20 lines, he was on the other side of
21 the power lines?

22 A. Yes.

23 Q. And from your point of
24 view, what was the height of the

ORAL DEPOSITION OF RONALD G. MADISON, 6/30/05

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1 aircraft relative to the power lines?

2 A. I think he was above them a
3 little bit. I think.

4 Q. And by "a little bit,"
5 could you give us some sort of an
6 estimate?

7 A. No.

8 Q. When you say you think he
9 was a little bit above them, can you
10 give me -- what's your level of
11 certainty on that?

12 A. You know when you're far
13 away things -- you know it -- I can't
14 really give you an answer on that.

15 Q. Have there been other plane
16 crashes around here when you've been
17 here?

18 A. Yes.

19 Q. About how far from your
20 house?

21 A. They would have been like
22 at the end of the runway down there,
23 that one lady I think was killed a
24 couple years ago. That one I can

Page 19

1 remember. And that's about all I can
2 think of.

3 Q. And were you outside when
4 that happened?

5 A. No, we were inside the
6 house here.

7 Q. Were you able to hear it
8 crash?

9 A. No.

10 Q. Have you ever heard a plane
11 crash around here?

12 A. No.

13 Q. Did you hear the sound of
14 an engine before you saw this
15 particular plane that was involved in
16 the crash that day?

17 A. From another airplane or
18 something?

19 Q. No, from this airplane.

20 A. No.

21 Q. So over the whole 15
22 seconds, did you ever hear the sound
23 of an engine?

24 A. No.

Page 20

1 Q. Did you expect to hear the
2 sound of an engine?

3 A. Not really. He was far
4 enough away and low, I wasn't
5 expecting, no.

6 Q. When you first saw this
7 plane that crashed out of the corner
8 of your eye, how long did you see it
9 before it went into this turn that
10 you described?

11 A. It was -- everything
12 happened so quick. So I can't really
13 tell you.

14 Q. How would you compare the
15 altitude of this aircraft to other
16 aircraft that you see coming in for a
17 landing?

18 A. He was low.

19 Q. Was he a little low or real
20 low?

21 A. He was low enough that I
22 thought there was something the
23 matter.

24 Q. Have you seen other

Page 21

1 aircraft come in for a landing at
2 such a low altitude?

3 A. No.

4 Q. Could you estimate how far
5 from the runway this aircraft was
6 when you first saw it?

7 A. No, I can't even give you
8 an answer on that either.

9 Q. Once you got this notion
10 that there was something wrong, did
11 you keep your eye on the aircraft
12 continuously after that?

13 A. Well, you couldn't see
14 nothing after. Like I say, it was
15 above the corn and then it went over
16 the corn or in the corn, because
17 that's when I lost eyesight to it.

18 Q. And is that what you
19 thought was wrong, that it had gone
20 into the corn?

21 A. It was that or glided out
22 over it.

23 Q. And in your mind, either
24 way, that was wrong to be going into

EXHIBIT DD

1 UNITED STATES DISTRICT COURT
2 MIDDLE DISTRICT OF FLORIDA

3 CASE NO. 2:02-CV-04852-(BMS)

4 THERESA MARIE SIMEONE, ETC., et
5 al.,

6 Plaintiffs,

7 vs.

8 BOMBARDIER-ROTAX, GmbH, et al.,

9 Defendants.
10 _____/

ORIGINAL

11 DEPOSITION OF BEN DAWSON
12
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15 Friday, August 12, 2005

16 10:04 a.m. - 11:35 a.m.

17 MARRIOTT AT TAMPA INTERNATIONAL AIRPORT

TAMPA INTERNATIONAL AIRPORT

18 TAMPA, FLORIDA
19 -----

20
21
22 REPORTED BY:

MICHELLE OLSEN BADEN, RPR

23 Notary Public

State of Florida at Large

24 Esquire Deposition Services - Tampa, Florida

813-221-2535 (800-838-2814)

25 Job No.: N749169

1 Q And you mentioned the term "these rules" in
2 your last answer. What rules were you referring to?

3 A The rules -- the regulations for flying
4 ultralight aircraft. They had speed restrictions and
5 all the rest of that stuff that goes with it. Flying at
6 safe speeds.

7 Q Do the rules include a rule for being able to
8 land the aircraft in case of sudden engine failure?

9 MR. MATTIONI: Object to form.

10 THE WITNESS: Yes.

11 BY MR. KELLY:

12 Q Did you discuss that with Mr. Simeone at some
13 point?

14 A It says I did stall stuff in there. And yes,
15 engine out procedures are -- like I say, those are
16 taught early on. After just a few flights we reduce the
17 throttle to idle and show them how the plane will glide
18 and we tell them what speed the airplane should be at
19 that point. We actually go up to 1500, 2000 feet and
20 reduce the power and then glide down as much as 500 feet
21 or so and demonstrating how much the plane will glide
22 and making turns. Turning while the engine is at idle
23 is also taught as part of the process.

24 Q When you say part of the process, would that
25 have been part of the process that you covered in your

1 a box or a crate.

2 Q Did Interplane distribute any manuals with its
3 aircraft?

4 A Yes.

5 Q What manuals did Interplane distribute?

6 A We gave them the factory original manuals that
7 came with the Rotax engines to the person purchasing the
8 aircraft.

9 Q Did Interplane also have its own manual?

10 A At that point in time I don't think we did.

11 Q At that point in time being around the time
12 that --

13 A Fran Simeone bought his airplane.

14 Q So would you have given Mr. Simeone any other
15 manuals, other than the Rotax manuals?

16 MR. MATTIONI: Object to the form.

17 THE WITNESS: Training manuals would have been
18 the only other thing that he might have gotten, the
19 USUA training manuals, plus -- there is three basic
20 manuals that go with the Rotax engine. There is an
21 installation manual. There is the maintenance
22 manual and then there is the operator's manual, as I
23 remember right.

24 BY MR. KELLY:

25 Q And as part of your sales or training

1 practice, did you go through the manuals with your
2 customers?

3 A Not generally. We covered the routine
4 problems with the engine, if it had such, or what might
5 be potential -- let me rephrase that -- potential
6 problems with the engine, you know, about changing your
7 spark plugs and how they had to do it and checking for
8 leaks and, you know, water, checking the water. All of
9 that was done on preflight, and so that kind of stuff we
10 covered pretty much there. As far as the full
11 operator's manual, no, it's pretty dry reading. We gave
12 that to them.

13 Q I'm going to show you what we marked Simeone 8
14 which was a manual provided to us by Mrs. Simeone, I
15 believe.

16 (Simeone Exhibit 8 was previously marked.)

17 BY MR. KELLY:

18 O It is a Rotax 582 operator's manual and I want
19 to direct your attention to page 4.

20 MR. MATTIONI: I'll just follow along.

21 MR. KELLY: I'll read it so everybody knows
22 what we're talking about. Two paragraphs. Reads:

23 "This engine by its design is
24 subject to sudden stoppage. Engine
25 stoppage can result in crash landings.

1 Such crash landings can lead to serious
2 bodily injury or death. Never fly the
3 aircraft equipped with this engine at
4 locations, air speeds, altitudes or
5 other circumstances from which a
6 successful no-power landing cannot be
7 made after sudden engine stoppage."

8 I'll put this in front of you and ask you if I
9 read it correctly?

10 A Yes.

11 Q Did you ever discuss that particular language
12 with Mr. Simeone?

13 A Yes. I will say very probably, okay. Because
14 one of the things that we teach as part of the flight

15 training when we're flying with the 2-cycle motors is
16 that you always have an emergency landing field in
17 sight. And because of that the ultralight aircraft
18 would take -- if they were going from Point A to point

19 B, they may take a varied route flying from this
20 emergency landing spot to that emergency landing spot,
21 and so forth. So emergency landing spots, again, that
22 is something we always covered.

23 Q Now, going back to when Mr. Simeone helped
24 sell a Skyboy or two at one of the air shows. Did he
25 receive any training from you as to what he should do?

EXHIBIT EE

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF PENNSYLVANIA
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5 THERESA MARIE SIMEONE,
6 etc., Et al.,

7 vs.

8 BOMBARDIER-ROTAX,
9 GmbH, et al. 2:02-cv-04852 (BMS)
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11
12

13 Oral deposition of MANUEL
14 RAEFSKY, held in the offices of The
15 Wolk Law Firm, 1710-12 Locust Street,
16 Philadelphia, Pennsylvania, held on
17 Wednesday, August 24, 2005,
18 commencing at 10:05 a.m., before
19 Kathleen McHugh, a Registered
20 Professional Reporter and Notary
21 Public.
22
23
24

ORAL DEPOSITION OF MANUEL RAEFSKY, 8/24/05

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1 A. Yeah.

2 Q. And to your knowledge, were
3 the spark plugs involved in this
4 accident aircraft ever inspected or
5 replaced?

6 A. Well, I presume that they
7 were because I presume that the guy
8 is not suicidal and he's going to
9 take care of it.

10 Q. Do you have any factual
11 basis for your presumption?

12 A. I -- well, there are no
13 logs, so, you know, there would be an
14 entry in a logbook somewhere. So I
15 can't say that.

16 Q. At the --

17 A. On the other hand, I have
18 no information that he didn't do it.

19 Q. At the top of Page 6, the
20 second bullet point, you state:
21 There is no evidence that the engine
22 had been adjusted or that the plugs
23 were not the original plugs.

24 A. That's correct.

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1 Q. Do you stand by that
2 statement today?

3 A. Well, I stand by it in that
4 there's no evidence they were not.
5 You know, I can't tell one way or the
6 other. And, as I say, I presume that
7 he followed the manual.

8 Q. And the basis for your
9 presumption is that he was not
10 suicidal?

11 A. I think that's pretty good.

12 Q. Well, you're presuming that
13 he's not suicidal?

14 A. Yeah.

15 Q. So it's a presumption on
16 top of a presumption then, isn't it?

17 MR. MATTIONI: This will be
18 my second objection.

19 THE WITNESS: Well, I'm
20 also presuming he wasn't a murderer,
21 because he killed the other guy, too,
22 so...

23 BY MR. KELLY:

24 Q. Staying on Page 6, the very

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1 first words, or the second and third,
2 what do you mean by "heat rated"?

3 A. Well, each plug has a heat
4 rating. And as I told you, that
5 deals with the capacity or the
6 capability to draw temperature away
7 from the tip of the plug. And they
8 alter that by changing the length of
9 the center electrode. So the longer
10 it is or the shorter it is, that

11 affects the -- that affects the heat
12 rate and the heat flow out of there.

13 Q. And what was the heat
14 rating for the spark plugs that you
15 examined?

16 A. I don't know.

17 Q. Do you know what the make
18 and model was of these plugs?

19 A. Yeah, it's in the manual.

20 It's a BR8ES, 14-millimeter
21 plug.

22 Q. Do you know who makes that
23 plug?

24 A. No, I don't.

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1 Q. Is it your opinion that the
2 plugs involved in this accident were
3 not properly heat rated?

4 A. Again, you have to look at
5 it in the context of the other items
6 that I talked about, the fuel charge
7 and the oil. Okay. For whatever
8 those circumstances were, they should
9 have had a hotter plug. Or if we
10 wanted to use this plug, we should
11 have done something about the
12 carburetion and oil injection.

13 Q. So they should have had a
14 hotter plug for this combination of
15 air and fuel and oil injection; is
16 that right?

17 A. Right. Or this plug with a
18 different combination of air, fuel,
19 and oil.

20 Q. Is it your opinion that
21 Rotax selected the wrong spark plug
22 for this 582 engine?

23 A. I have no opinion one way
24 or the other. If the plug is cleaned

ORAL DEPOSITION OF MANUEL RAEFSKY, 8/24/05

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1 way or the other, but I saw nothing
2 that would indicate that there was a
3 test.

4 Q. You indicate that when
5 the -- in the middle of that
6 paragraph on Page 5: When the plugs
7 were retested, some improvement was
8 noted which would be expected since
9 firing the plugs burns the oil and
10 debris away and in the test there is
11 nothing to replace the vaporized oil,
12 this allowing some improvement.

13 Did I read that correctly?

14 A. That's correct.

15 Q. Do you have an opinion as
16 to whether the debris and oil on the
17 tips of the plugs was present at the
18 time that Mr. Simeone and Mr. Lyngyel
19 took off on the day of their
20 accident?

21 A. Do I have an opinion
22 whether it was there?

23 Q. Yes.

24 A. Most likely it was.

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1 Q. Would it have burned off
2 over the course of their flight?

3 A. No.

4 Q. Why not?

5 A. The reason is that in a
6 test you don't have it in a cylinder
7 which is getting charged. You know,
8 it's just an electrical test; it's
9 not a functional test. In the
10 cylinder, every time it fires, piston
11 goes down, you bring in a new charge
12 of oil, fuel, the piston compresses
13 it, it explodes, doesn't burn off the
14 accumulated stuff, so you just keep
15 adding to it, keep adding to it.

16 In the test, you're not
17 adding the fuel charge. So whatever
18 you burn off, you burn off. And it
19 gets better with time. In the engine
20 it gets worse with time.

21 So the test is not
22 reflective of an actual situation.
23 And the -- you know, even Weldon
24 said, well, even after -- even in the

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1 second test when it was improved, it
2 was a -- how did he phrase it? A
3 weak spark or a -- you know,
4 indicating that it was not a healthy
5 spark. And let me tell you, when
6 that plug fires, it's lightning in
7 there.

8 Faint. He used the word
9 "faint." And it's anything but faint
10 when it's proper.

11 Q. Did you examine the plugs
12 after they had been plug tested by
13 Mr. Sommer?

14 A. No.

15 Q. Have you seen any pictures
16 of the plugs after they had been plug
17 tested by Mr. Sommer?

18 A. Yes.

19 Q. Do you have --

20 A. I saw some after an engine
21 test, and they were cleaned, which
22 said that, you know, in the new test
23 set-up, they burned everything off,
24 which allowed them to say that the

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1 plugs were operable, but, you know,
2 those plugs when they're dirty and
3 oily like that or, you know, sooty
4 like that, the more you run them in a
5 clean environment, the better they
6 get.

7 Q. Could the fouling of the
8 spark plugs have been discovered by
9 Mr. Simeone and Mr. Lyngyel prior to
10 their flight on July 22nd, 2000?

11 MR. MATTIONI: Object to
12 the form.

13 THE WITNESS: Well, it's
14 possible if they pulled the plugs.
15 BY MR. KELLY:

16 Q. Was there anything
17 preventing them from pulling the
18 plugs and examining them before their
19 flight on July 22nd, 2000, to your
20 knowledge?

21 MR. MATTIONI: Same
22 objection.

23 THE WITNESS: Well, there's
24 nothing that prevented it and there's

ORAL DEPOSITION OF MANUEL RAEFSKY, 8/24/05

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1 nothing that prevented them from not
2 taking off, you know, it's that kind
3 of a situation.

4 BY MR. KELLY:

5 Q. In other words, that
6 fouling was there to be seen before
7 they took off, correct?

8 MR. MATTIONI: Same
9 objection.

10 THE WITNESS: They would --
11 I think -- in my opinion, they would
12 have seen something had they looked
13 at that time.

14 BY MR. KELLY:

15 Q. Another term that you use
16 is the "cleaning and gapping of
17 plugs." Could you just tell me what
18 you mean by that? I think that's in
19 that same paragraph that I won't go
20 away from.

21 A. Yeah. Cleaning and
22 gapping -- well --

23 Q. Yes. Cleaning and gapping.

24 A. And gapping. All right.

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1 The opening between the center
2 electrode and the ground electrode is
3 called the gap, okay, that open
4 space, and that's what the spark is
5 supposed to jump. Now, that gap has
6 to be within certain tolerances. If
7 it's too narrow, the plug will fire
8 early. If it's too big, it may not
9 fire at all. Okay. So you -- that's
10 one of the variables that you've got
11 to deal with.

12 The second, of course, is
13 the cleanliness of it. Now, in the
14 old days when I was a kid with a '48
15 Chevy, you would pull the plugs, you
16 would sandblast them to clean them,
17 and then you would set the gap. So
18 that's what you do.

19 Q. How do you set the gap?

20 A. What you have is a little
21 piece of wire that's at the proper
22 thickness, proper diameter, in this
23 case 20,000ths, and you slip it in
24 there. If it goes, you squeeze the

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1 outer electrode or the ground
2 electrode down until it's a tight
3 fit. If you can't get the wire in
4 there, then you open it up with a
5 screwdriver.

6 Q. As a simple mechanical
7 action?

8 A. Every mechanic knows how to
9 do it.

10 Q. You just take a screwdriver
11 and make it a little wider?

12 A. And pry it up or you bend
13 it on a piece of steel or something
14 to close it. And there are spark
15 plug gap feeler gauges that are
16 little hooked wires, L-shaped wires,
17 of varying diameters that you slip in
18 there.

19 Q. And is cleaning and gapping
20 part of routine maintenance of spark
21 plugs?

22 MR. MATTIONI: Object to
23 the form.

24 THE WITNESS: Well, in a

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1 sense it is, but they don't tell
2 you -- you know, one of the things
3 that's light in this manual is they
4 don't tell you what to do. When
5 somebody gives you an instruction to
6 inspect something, they've got to
7 tell you what to look for and they've
8 got to tell you what the accept and
9 reject criteria are. That's missing
10 here.

11 So it's -- you know, I
12 would not go by this because it's not
13 full enough in its explanation. It's
14 deficient as far as a warning or
15 instruction goes.

16 BY MR. KELLY:

17 Q. Does the manual at any
18 point instruct the user to have the
19 engine serviced by a qualified Rotax
20 mechanic?

21 A. Somewhere it says that.

22 Q. Is that sufficient advice?

23 MR. MATTIONI: Object to
24 the form.

EXHIBIT FF

ORAL DEPOSITION OF HERBERT C. NEWBOLD, 8/26/05

1 UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF PENNSYLVANIA
3

4 THERESA MARIE SIMEONE,
Personal Representative of the
5 Estate of Albert Francis Simeone,
Jr., Deceased, et al.,
6 Plaintiff

7 V No. 02-4852

8 BOMBARDIER-ROTAX GMBH,
Individually and as a Joint Venture
9 And/or d/b/a Rotax, et al.,
Defendant

10
11
12 Oral deposition of HERBERT
13 C. NEWBOLD, taken at the law offices
14 of The Wolk Law Firm, 1710-12 Locust
15 Street, Philadelphia, Pennsylvania,
16 on Friday, August 26, 2005,
17 commencing at approximately
18 a.m. before Maureen E.
19 Broderick, a Registered Professional
20 Reporter, pursuant to notice.
21
22
23
24

ORAL DEPOSITION OF HERBERT C. NEWBOLD, 8/26/05

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1 A. Yes.

2 Q. Would you tell me what you
3 mean by the term "significant" in
4 that sentence?

5 A. Based on my experience with
6 two-stroke engines and based on my
7 understanding that the engine had
8 limited time, I would have concluded
9 that there were significant deposits.

10 The tops of the pistons
11 were covered with carbon and the
12 spark plugs themselves were -- had
13 significant carbon deposits,
14 "significant" meaning to me that that
15 wasn't something that you'd expect
16 with a normal operation of this
17 engine.

18 Q. So "significant" meaning
19 more than you would expect given your
20 understanding of the engine running
21 time?

22 MR. MATTIONI: Objection.

23 BY MR. KELLY:

24 Q. Is that fair?

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1 experience, is that carbon build-up
2 something that occurs suddenly or is
3 it a cumulative effect that occurs
4 over time?

5 MR. MATTIONI: Objection.

6 THE WITNESS: It can
7 actually happen both ways.

8 BY MR. KELLY:

9 Q. In your examination, were
10 you able to determine whether this
11 was a cumulative deposit of carbon or
12 a sudden deposit of carbon?

13 A. With only -- with only
14 roughly 35 hours on the engine, it's
15 going to -- it's going to be fairly
16 sudden. Although, whether it
17 happened in the last, whatever, ten
18 hours of the engine operation as
19 opposed to whether it occurred over
20 the full 35 engine hours would be
21 difficult to tell.

22 Q. What is your understanding
23 of how long the final flight of this
24 aircraft was that day in terms of

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1 MR. MATTIONI: Objection.

2 THE WITNESS: Given my --
3 well, yeah, generally speaking, yes.
4 BY MR. KELLY:

5 Q. By using the word
6 "significant" are you suggesting that
7 it was at a level that would
8 interfere with the functioning of the
9 engine?

10 A. Yes, I believe that it
11 would have. Yes.

12 Q. How do you make a
13 determination that a level of carbon
14 deposit is significant enough to
15 interfere with the functioning of the
16 engine?

17 A. I guess I would base that
18 opinion on roughly 40 years of
19 examining two-stroke spark plugs and
20 what a spark plug may look like with
21 a properly operating engine and what
22 a plug may look like if the engine is
23 not running properly.

24 Q. And in your 40 years of

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1 time?

2 A. Maybe just a little bit
3 over an hour.

4 Q. Do you believe that the
5 deposits that you saw on the spark
6 plugs were visible before the
7 beginning of the flight that day?

8 MR. MATTIONI: Object to
9 the form.

10 THE WITNESS: It's
11 possible. I would think that it's
12 more probable that those deposits
13 would occur a little bit -- over a
14 longer period of time than just an
15 hour, particularly the deposits that
16 you see on the pistons. But it may
17 be possible.

18 BY MR. KELLY:

19 Q. But if one had examined the
20 spark plugs before the commencement
21 of flight on the day of the accident
22 one would have seen these deposits,
23 correct?

24 MR. MATTIONI: Object to

ORAL DEPOSITION OF HERBERT C. NEWBOLD, 8/26/05

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1 the form.

2 THE WITNESS: You may have
3 seen some deposits. Whether you
4 would have seen the deposits to this
5 degree, probably not. But you should
6 have probably seen some deposits.

7 BY MR. KELLY:

8 Q. Does Rotax have a suggested
9 maintenance and inspection schedule
10 for these spark plugs?

11 A. If I recall correctly, it's
12 about every 12 1/2 hours, or
13 something like that.

14 Q. If those spark plugs had
15 been inspected every 12 1/2 hours,
16 would you expect that the deposit
17 would have been observable by the
18 inspector?

19 MR. MATTIONI: Object to
20 the form.

21 THE WITNESS: It's
22 possible, yes. It's -- because I
23 can't say exactly when the deposits
24 would occur, I can't say exactly what

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1 you might see.

2 My suspicion would be -- or
3 my opinion, I guess, would be that as
4 the engine develops carbon build-up,
5 its operation is going to get
6 increasingly poorer. And so whether
7 you would -- let's say, as an
8 example, exactly what they would look
9 like at some point in time may not be
10 an exact science.

11 BY MR. KELLY:

12 Q. Why would Rotax recommend
13 that the spark plugs be inspected
14 every 12 1/2 hours?

15 A. That would just be a --
16 based on how the engine is going to
17 be used, it may just be a safety
18 issue.

19 Q. Safety in what respect?

20 A. Well, you wouldn't want to
21 have an engine -- or you wouldn't
22 want to have, in your engine, spark
23 plugs that are contaminated. And,
24 you know, it would be appropriate to

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1 check them every so often.

2 Q. Did you read the deposition
3 of Mr. Losey, who was the flying
4 companion of Mr. Lengyel and
5 Mr. Simeone that day?

6 A. Yes.

7 Q. Did Mr. Losey report on
8 communications that he was having
9 with Mr. Simeone and Mr. Lengyel as
10 the flight proceeded?

11 A. Yes.

12 Q. Did he report that there
13 was any complaint of engine problems
14 as the flight proceeded?

15 A. None that he reported.

16 Q. Moving right along to the
17 next sentence, you state, "Also
18 present was excessive amounts of
19 two-stroke engine oil in the intake
20 manifold and crankcase."

21 A. Yes.

22 Q. What do you mean by
23 "excessive"?

24 A. It appeared to me that

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1 there was more oil laying in the
2 manifolds and on the -- or in the
3 area of the combustion chamber than
4 what I would normally expect to see.

5 Q. Is it normal to see some
6 oil laying in the area of the
7 manifolds and in the area of the
8 combustion chamber?

9 A. Yes.

10 Q. And how do you distinguish
11 between a normal amount and an
12 excessive amount?

13 A. Well, that's a good
14 question. You would probably need to
15 know kind of how the engine -- some
16 conditions surrounding the engine
17 itself. And -- but an engine that
18 was not damaged and functioning
19 properly, I wouldn't expect to see as
20 much oil in those areas as what I
21 did.

22 Q. How much did you see?

23 A. In terms of volume?

24 Q. Yes.